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Shareholders of SUSE S.A., in particular those who have their place of residence, seat, or habitual abode in the United States of America or elsewhere outside the Grand Duchy of Luxembourg or the Federal Republic of Germany, should pay particular attention to the information contained in Section 1 (*General information on the implementation of the Purchase Offer*) and Section 7.5 (*Possible future acquisitions of SUSE Shares*) of the Offer Document.



**OFFER DOCUMENT**

**Voluntary Public Purchase Offer  
(CASH OFFER)**

by

**Marcel LUX III SARL**

51A, Boulevard Royal  
L-2449 Luxembourg  
Grand Duchy of Luxembourg

to the shareholders of

**SUSE S.A.**

11-13, Boulevard de la Foire  
L-1528 Luxembourg  
Grand Duchy of Luxembourg

for the acquisition of all ordinary shares without any nominal value held by them in

**SUSE S.A.**

against a cash consideration in the amount of  
EUR 16.00 per SUSE Share  
minus the Interim Dividend per SUSE Share  
(as defined in Section 4.2 of the Offer Document)

**Acceptance Period:**

**24 August 2023 to 22 September 2023**

**24:00 hrs (Frankfurt am Main local time) / 18:00 hrs (New York local time)**

SUSE Shares: ISIN LU2333210958

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# 1 GENERAL INFORMATION ON THE IMPLEMENTATION OF THE PURCHASE OFFER

## 1.1 Legal basis

The voluntary public purchase offer (the "**Purchase Offer**") contained in this offer document (the "**Offer Document**") by Marcel LUX III SARL, a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg, with registered office at 51A, Boulevard Royal, L-2449 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés, Luxembourg*) under registration number B 225723, (the "**Bidder**") is a voluntary public purchase offer to all shareholders of SUSE S.A. (the "**SUSE Shareholders**" and each a "**SUSE Shareholder**"), a public limited liability company (*société anonyme*) incorporated under the laws of the Grand Duchy of Luxembourg, with registered office at 11-13, Boulevard de la Foire, L-1528 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés, Luxembourg*) under registration number B 225816 ("**SUSE**"), for the acquisition of all ordinary shares in dematerialized form (*titres dématérialisés*) without any nominal value and an accounting par value of USD 0.10 each (ISIN LU2333210958) in SUSE, registered in a single securities issuance account (*compte d'émission*) maintained by LuxCSD S.A. ("**LuxCSD**") (each a "**SUSE Share**", and collectively, the "**SUSE Shares**"), which are not directly held by the Bidder, including all ancillary rights, in particular the right to dividends, existing at the time of the settlement of the Purchase Offer. The Purchase Offer may be accepted by all SUSE Shareholders subject to the terms and conditions of the Offer Document and applicable statutory provisions. SUSE Shares for which the Purchase Offer has been accepted, and not validly withdrawn, shall be referred to as "**Tendered SUSE Shares**".

The SUSE Shares are admitted to trading on the regulated market (*Regulierter Markt*) of the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse* – "**FSE**") in its subsegment with additional post-admission obligations (*Prime Standard*) under ISIN LU2333210958 and are tradable via the Exchange Electronic Trading system ("**XETRA**") of Deutsche Börse AG, Frankfurt am Main, Federal Republic of Germany.

The Purchase Offer relates to all SUSE Shares not directly held by the Bidder and will be implemented solely in accordance with German law, certain applicable provisions of the laws of the Grand Duchy of Luxembourg and certain applicable securities law provisions of the United States of America (the "**United States**").

## **1.2 Special notice to SUSE Shareholders whose place of residence, incorporation, or habitual abode is in the United States or elsewhere outside the Grand Duchy of Luxembourg and the Federal Republic of Germany**

The Purchase Offer relates to shares in a Luxembourg public limited liability company (*société anonyme*), the shares of which are admitted to trading on the regulated market (*Regulierter Markt*) of the FSE in its subsegment with additional post-admission obligations (*Prime Standard*). The Purchase Offer will not be subject to review or registration proceedings of any securities regulator, neither in nor outside the Grand Duchy of Luxembourg or the Federal Republic of Germany, and has therefore not been approved or recommended by any securities regulator.

SUSE Shareholders whose place of residence, incorporation, or habitual abode is in the United States should note that the Purchase Offer is made in respect of securities of a company which is a foreign private issuer within the meaning of the United States Securities Exchange Act of 1934, as amended (the "**U.S. Exchange Act**"), whose shares are not registered under Section 12 of the U.S. Exchange Act. The Purchase Offer is being made in the United States in reliance on the Tier 2 exemption from certain requirements of the U.S. Exchange Act and the rules and regulations thereunder and is principally governed by disclosure and other regulations and procedures of the Federal Republic of Germany, which are different from those of the United States. To the extent that the Purchase Offer is subject to the securities laws of the United States, such laws only apply to SUSE Shareholders in the United States and no other person has any claims under such laws.

The Bidder may acquire, or make arrangements to acquire, SUSE Shares other than in the course of the Purchase Offer, on or off the stock exchange, during the period in which the Purchase Offer remains open for acceptance, provided that such acquisitions or arrangements do not occur in the United States.

It may be difficult for SUSE Shareholders who have their place of residence, incorporation, or habitual abode outside the Grand Duchy of Luxembourg to enforce rights and claims subject to the laws of a country other than their country of residence, incorporation, or habitual abode, in particular since the Bidder and SUSE are incorporated under the laws of the Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés, Luxembourg*), and some or all of its managers/directors and officers may be residents of a country other than the country of residence, incorporation, or habitual abode of the relevant SUSE Shareholder. SUSE Shareholders may not be able to sue, in a court in their country of residence, incorporation, or habitual abode, a foreign entity or its directors and officers for violations of the laws of their country of

residence, incorporation, or habitual abode. Further, it may be difficult to compel a foreign entity or its affiliates to subject themselves to a judgment of a court in the country of residence, incorporation, or habitual abode of the relevant SUSE Shareholder.

The receipt of the Offer Price may be a taxable transaction under applicable tax laws, including those of the country of residence, incorporation, or habitual abode of the relevant SUSE Shareholder. SUSE Shareholders are advised to consult an independent professional advisor immediately regarding the tax consequences of the acceptance of the Purchase Offer, including with regard to the net amounts they will receive. Neither the Bidder nor any of its managers, officers or employees accept responsibility for any tax effects on, or liabilities of, any person because of the acceptance of the Purchase Offer. The Offer Document does not contain any information in respect of overseas taxation.

### **1.3 No review or approval of the Offer Document and/or the Purchase Offer**

The Bidder already holds a controlling stake in SUSE. Therefore, the Purchase Offer will neither be subject to the Luxembourg law of 19 May 2006 on takeover bids, as amended, nor to the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) and the Offer Document will therefore not be reviewed by, and its publication does not require the approval of, any regulatory authority in the Grand Duchy of Luxembourg, in the Federal Republic of Germany or in any other jurisdiction. No registrations, admissions or approvals of the Offer Document and/or the Purchase Offer have been made or granted under any laws and no registrations, admissions or approvals are contemplated.

### **1.4 Publication of the decision to launch the Purchase Offer**

On 17 August 2023, the Bidder published its decision to launch the Purchase Offer on its website at [www.eqt-marcel-offer.com](http://www.eqt-marcel-offer.com) and via financial news service EQS News, which will also be available on their website at [www.eqs-news.com](http://www.eqs-news.com).

### **1.5 Publication and dissemination of the Offer Document**

On 24 August 2023, the Bidder published the Offer Document on its website at [www.eqt-marcel-offer.com](http://www.eqt-marcel-offer.com) and by way of a notice of availability via financial news service EQS News, which is also available on their website at [www.eqs-news.com](http://www.eqs-news.com).

The publication, dispatch, distribution, or other dissemination of the Offer Document or other documents related to the Purchase Offer outside of the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States may

be subject to legal restrictions. The Offer Document and other documents related to the Purchase Offer may not be published, dispatched to, distributed or disseminated by third parties in countries in which this would be illegal. The Bidder has not permitted the publication, dispatch, distribution or dissemination of the Offer Document or other documents related to the Purchase Offer by third parties outside of the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States. Therefore, custodian investment service providers may not publish, dispatch, distribute, or disseminate the Offer Document or other documents related to the Purchase Offer outside of the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States unless in compliance with all applicable domestic and foreign statutory provisions.

## **1.6 Acceptance of the Purchase Offer outside the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States**

The Purchase Offer may be accepted by all SUSE Shareholders subject to the terms and conditions of the Offer Document and applicable statutory provisions. Acceptance of the Purchase Offer outside of the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States may be subject to legal restrictions. SUSE Shareholders who come into possession of the Offer Document outside of the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States, and who wish to accept the Purchase Offer outside of the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States and/or who are subject to statutory provisions other than those of the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States, are advised to inform themselves of, and if necessary seek counsel concerning, the relevant applicable statutory provisions and to comply with them. Neither the Bidder nor its affiliates, are in any way responsible, nor do they assume liability, for compliance of a publication, dispatch, distribution or dissemination of the Offer Document outside of the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United States with the relevant local legal provisions.

## **2 INFORMATION REGARDING THE STATEMENTS CONTAINED IN THE OFFER DOCUMENT**

### **2.1 General**

Except as otherwise stated, references to time in the Offer Document are references to local time in Frankfurt am Main, Federal Republic of Germany. To the extent that expressions such as "currently" or "today" are used in the Offer Document, they refer to the date of the publication of the Offer Document, *i.e.*, 24 August 2023.



References in the Offer Document to a "**Banking Day**" refer to any day, other than Saturday and Sunday, on which the bank offices of the commercial banks in Luxembourg, Grand Duchy of Luxembourg, Frankfurt am Main, Federal Republic of Germany, London, United Kingdom and New York City, United States, are open for their ordinary banking business.

The specification "**EUR**" relates to the Euro currency; the specification "**USD**" relates to the United States Dollar currency.

The Bidder has not authorized third parties to make statements about the Purchase Offer or the Offer Document. If third parties nevertheless make such statements, these shall not be attributable to the Bidder.

## **2.2 Status and sources of the information contained in the Offer Document**

The information relating to SUSE and its controlled subsidiaries within the meaning of article 1711-1 of the Luxembourg law of 10 August 1915 on commercial companies, as amended (the "**Luxembourg Company Law**") (collectively, "**SUSE Group**") contained in the Offer Document is based on certain publicly accessible sources of information (*e.g.*, published annual financial statements, press releases and analyst presentations) as available at the date of the publication of the Offer Document. In particular, the annual report of SUSE for the financial year 2022, which may be downloaded from the internet at <https://ir.suse.com/websites/suse/English/6000/financial-reports.html>, was used for preparation of the Offer Document. The Bidder did not verify the accuracy and completeness of publicly accessible information.

## **2.3 Forward-looking statements and intentions**

The Offer Document includes certain forward-looking statements. These statements are related to future events and can be identified by expressions such as "expect", "believe", "anticipate", "intend", "seek", "assume", "would", "consider" or similar expressions.

Forward-looking statements by their nature address matters that are, to different degrees, uncertain, and involve known and unknown risks and uncertainties, many of which are beyond the Bidder's control and all of which are based on the Bidder's current beliefs and expectations about future events. These risks, uncertainties and assumptions include, but are not limited to, the acceptance of the Purchase Offer by SUSE Shareholders, the satisfaction of the condition to the settlement of the Purchase Offer and the timing of settlement of the Purchase Offer.

The forward-looking statements contained in the Offer Document may prove to be inaccurate, and future events and developments may differ materially from the forward-looking statements contained in the Offer Document. No assurance can be given that such future expectations will be achieved. The Bidder expressly disclaims any obligation or undertaking to update these forward-looking statements to reflect any change in their expectations or any change in events, conditions, or circumstances on which such statements are based.

It is possible that the Bidder may change its intentions and estimates expressed in the Offer Document after the publication of the Offer Document.

## 2.4 No updates

The Bidder will not update the Offer Document (also with regard to any changed intentions of the Bidder) unless required by applicable law.

## 3 SUMMARY OF THE PURCHASE OFFER

***Note:** The following summary contains an overview of certain information contained in the Offer Document. It is supplemented by the information and statements reflected elsewhere in the Offer Document and is to be read in connection with them. With regard to defined terms, the definitions contained in the Offer Document (in some cases set out further below) apply. This summary does not contain all information that could be relevant to the SUSE Shareholders. All SUSE Shareholders should therefore carefully read the entire Offer Document.*

<i>Bidder:</i>	Marcel LUX III SARL 51A, Boulevard Royal L-2449 Luxembourg Grand Duchy of Luxembourg
<i>Target Company:</i>	SUSE S.A. 11-13, Boulevard de la Foire L-1528 Luxembourg Grand Duchy of Luxembourg
<i>Subject of the Purchase Offer:</i>	Acquisition of all ordinary shares in dematerialized form ( <i>titres dématérialisés</i> ) without any nominal value and an accounting par value of USD 0.10 each (ISIN LU2333210958) in SUSE, which are not directly held by the Bidder, including all ancillary rights, in particular the right to dividends, existing at the time of the

	<p>settlement of the Purchase Offer. As the Interim Dividend per SUSE Share (as defined in Section 4.2 of the Offer Document) will be paid to all SUSE Shareholders (as defined in Section 1.1 of the Offer Document) before the settlement of the Purchase Offer, such Interim Dividend per SUSE Share will be paid to SUSE Shareholders also with respect to their Tendered SUSE Shares (as defined in Section 1.1 of the Offer Document), it being noted that the right to the Interim Dividend per SUSE Share will not be transferred to the Bidder.</p>
<i>Offer Price:</i>	EUR 16.00 per SUSE Share minus the Interim Dividend per SUSE Share (as defined in Section 4.2 of the Offer Document).
<i>Acceptance Period:</i>	24 August 2023 through 22 September 2023, 24:00 hrs (Frankfurt am Main local time) / 18:00 hrs (New York local time), unless extended pursuant to Section 5.2 of the Offer Document.
<i>Results Publication</i>	On the third Banking Day after the end of the Acceptance Period, the Bidder will publish the final acceptances of the Purchase Offer (the " <b>Results Publication</b> ").
<i>Offer Condition:</i>	<p>The Purchase Offer and the agreements which have been entered into as a result of the acceptance of the Purchase Offer are subject to the condition that by no later than on the sixth (6<sup>th</sup>) Banking Day following the Results Publication, the Bidder receives an amount of the Interim Dividend with respect to the Bidder SUSE Shares (as defined in Section 7.4.1 of the Offer Document), which is at least equal to the Actually Required Financing Amount (as defined in Section 11.1 of the Offer Document).</p> <p>If such offer condition has not been fulfilled or effectively waived by the Bidder, the Purchase Offer shall lapse and the agreements which have been entered into as a result of the acceptance of the Purchase Offer will cease to exist and will not be consummated (condition subsequent; <i>auflösende Bedingung</i>)).</p>
<i>Acceptance of the</i>	Acceptance of the Purchase Offer is to be declared in text

<i>Purchase Offer / Blocking of Tendered SUSE Shares:</i>	<p>form or electronically by the respective SUSE Shareholder during the Acceptance Period to the Custodian Bank (as defined in Section 12.2(a) of the Offer Document). The acceptance will not become valid until the SUSE Shares for which the Purchase Offer has been accepted have been timely blocked for further transfer at LuxCSD in accordance with Section 12.2 of the Offer Document.</p> <p>Tendered SUSE Shares cannot be traded. Title to the Tendered SUSE Shares may not be transferred other than to the Bidder in accordance with the Purchase Offer.</p> <p>Until the settlement of the Purchase Offer, Tendered SUSE Shares shall remain in the securities deposit account of the SUSE Shareholder who accepted the Purchase Offer.</p>
<i>Costs of acceptance:</i>	<p>The acceptance of the Purchase Offer will not be subject to any charges by the Central Settlement Agent (as defined in Section 12.1 of the Offer Document). Any costs and expenses charged by the Custodian Banks or investment service providers, and any expenses incurred by SUSE Shareholders, must be borne by the respective SUSE Shareholder. Any exchange, sales tax or stamp duty arising from the acceptance of the Purchase Offer shall also be borne by the respective SUSE Shareholder.</p>
<i>ISIN:</i>	<p>SUSE Shares: ISIN LU2333210958.</p>
<i>Publications:</i>	<p>The Offer Document is published by the Bidder on its website at <a href="http://www.eqt-marcel-offer.com">www.eqt-marcel-offer.com</a> and by way of a notice of availability via financial news service EQS News on 24 August 2023, which will also be available on their website at <a href="http://www.eqs-news.com">www.eqs-news.com</a>.</p> <p>Any publications and announcements of the Bidder with respect to the Purchase Offer will be published on the aforementioned internet address and by way of a notice of availability via financial news service EQS News, which will also be available on their website at <a href="http://www.eqs-news.com">www.eqs-news.com</a>.</p>

<i>Settlement:</i>	<p>If the Offer Condition has been fulfilled, or effectively waived by the Bidder, the Offer Price for the Tendered SUSE Shares shall be transferred to the relevant Custodian Bank no later than on the eighth (8<sup>th</sup>) Banking Day following the Results Announcement.</p> <p>Upon transfer of the Offer Price to the relevant Custodian Bank, the Bidder will have fulfilled its obligation to pay the Offer Price. It will be the responsibility of the Custodian Banks to credit the Offer Price without undue delay to the relevant SUSE Shareholder who accepted the Purchase Offer.</p>
<i>Right of withdrawal:</i>	SUSE Shareholders who have accepted the Purchase Offer have a right of withdrawal pursuant to Section 15 of the Offer Document.

## 4 OFFER

### 4.1 Offer Price

The Bidder hereby offers to acquire all ordinary shares in dematerialized form (*titres dématérialisés*) without any nominal value and an accounting par value of USD 0.10 each (ISIN LU2333210958) in SUSE, which are not directly held by the Bidder, including all ancillary rights, in particular the right to dividends, existing at the time of the settlement of the Purchase Offer, against payment of a cash consideration in the amount of

**EUR 16.00 per SUSE Share**  
**minus the Interim Dividend per SUSE Share**  
(as defined in Section 4.2 of the Offer Document)

subject to the terms and conditions set forth in the Offer Document (the "**Offer Price**").

As the Interim Dividend per SUSE Share will be paid to all SUSE Shareholders before the settlement of the Purchase Offer, such Interim Dividend per SUSE Share will be paid to SUSE Shareholders also with respect to their Tendered SUSE Shares, it being noted that the right to the Interim Dividend per SUSE Share will not be transferred to the Bidder.

## 4.2 Combined Offer and Interim Dividend Amount per SUSE Share

The Offer Price to be paid by the Bidder will depend on the amount of the Interim Dividend per SUSE Share (as defined below) to be paid by SUSE. However, the aggregate amount of the Offer Price and the Interim Dividend per SUSE Share will amount to:

**EUR 16.00**

(the "**Combined Offer and Interim Dividend Amount per SUSE Share**").

The Transaction Framework Agreement (as defined and described in more detail in Section 9.1 of the Offer Document) includes certain provisions with respect to the declaration and distribution of an interim dividend by SUSE after expiry of the Acceptance Period (as defined in Section 5.2 of the Offer Document), and prior to the settlement of the Purchase Offer (such interim dividend, the "**Interim Dividend**").

The "**Interim Dividend per SUSE Share**" means the (gross) Euro amount resulting from the division of the (gross) aggregate amount of the Interim Dividend (such amount the "**Aggregate Interim Dividend Amount**") by the number of SUSE Shares (including Tendered SUSE Shares) at the time the Interim Dividend is declared.

The Bidder intends to finance the Offer Price for the Tendered SUSE Shares and certain transaction costs incurred by it by the Interim Dividend paid with respect to the Bidder SUSE Shares (as defined in Section 7.4.1 of the Offer Document). Therefore, the amount of the Interim Dividend per SUSE Share (and the resulting Offer Price) will only be determined after the end of the Acceptance Period (as defined in Section 5.2 of the Offer Document) based on the number of Tendered SUSE Shares such that the Interim Dividend received by the Bidder with respect to the Bidder SUSE Shares is at least equal to the Actually Required Financing Amount (as defined in Section 11.1 of the Offer Document) which depends on the number of Tendered SUSE Shares and includes certain transaction costs incurred by the Bidder. The higher the number of Tendered SUSE Shares is, the higher will be the Interim Dividend per SUSE Share paid by SUSE and the lower the Offer Price to be paid by the Bidder.

For illustrative purposes, the table below sets out the Interim Dividend per SUSE Share (and the resulting Offer Price and other key parameters) for different hypothetical acceptance ratios based on the current number of outstanding SUSE Shares plus the Maximum LTIP SUSE Shares (as defined in Section 9.2.6 of the Offer Document).

Acceptance quota of the free float SUSE Shares*	(Gross) Aggregate Interim Dividend Amount (in EUR)	Interim Dividend per SUSE Share (in EUR)	Offer Price (in EUR)	Combined Offer and Interim Dividend Amount per SUSE Share (in EUR)
25%	184,707,748	1.08	14.92	16.00
50%	335,210,358	1.96	14.04	16.00
75%	468,610,399	2.74	13.26	16.00
100%	586,618,127	3.43	12.57	16.00

\* Expressed as percentage of aggregate number of Tendered SUSE Shares divided by the sum of (i) the current number of outstanding SUSE Shares other than the Bidder SUSE Shares and (ii) the total number of Maximum LTIP SUSE Shares.

### 4.3 Publications, Announcements and Notifications

Any publications and announcements of the Bidder with respect to the Purchase Offer will be published on the website of the Bidder at [www.eqt-marcel-offer.com](http://www.eqt-marcel-offer.com). In addition, the Bidder will notify any such publication or announcement by way of a notice of availability via financial news service EQS News, which will also be available on their website at [www.eqs-news.com](http://www.eqs-news.com).

The Bidder will publish the final acceptances of the Purchase Offer (the "**Results Publication**") in accordance with this Section 4.3 of the Offer Document on the third Banking Day after the end of the Acceptance Period (as defined in Section 5.2 of the Offer Document).

## 5 ACCEPTANCE PERIOD

### 5.1 Duration of the Acceptance Period

The acceptance period for the Purchase Offer commences upon publication of the Offer Document on 24 August 2023. It ends on

**22 September 2023, 24:00 hrs (Frankfurt am Main local time) /  
18:00 hrs (New York local time),**

unless extended in accordance with Section 5.2 of the Offer Document.

## 5.2 Extension of the Acceptance Period

The Bidder may extend the acceptance period set forth in Section 5.1 of the Offer Document by up to a total of six weeks at any time until the end of the last day of the acceptance period (as extended from time to time). Pursuant to the Transaction Framework Agreement (as defined in Section 9.1 of the Offer Document), such extension requires the prior consent of SUSE (such consent not to be unreasonably delayed or withheld).

The period for acceptance of the Purchase Offer, including any extension of such period as set forth above, is uniformly referred to as the "**Acceptance Period**" in the Offer Document.

The Bidder will announce any extension of the Acceptance Period in accordance with Section 4.3 of the Offer Document.

## 6 EXPECTED TIMETABLE FOR THE PURCHASE OFFER

The following is the expected timetable of the Purchase Offer, which is subject to change:

17 August 2023	Publication of the decision to launch the Purchase Offer
24 August 2023	Publication of the Offer Document
	Commencement of the Acceptance Period
22 September 2023	End of Acceptance Period
27 September 2023	Results Publication
	Declaration of Interim Dividend
4 October 2023	Payment of Interim Dividend
	Fulfillment of Offer Condition (as defined in Section 11.1 of the Offer Document)
	Publication of the fulfillment of the Offer Condition
6 October 2023	Settlement of the Purchase Offer



## **7 DESCRIPTION OF THE BIDDER AND ITS SHAREHOLDER STRUCTURE**

### **7.1 Legal basis and capital structure of the Bidder**

The Bidder is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg, with registered office at 51A, Boulevard Royal, L-2449, Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés, Luxembourg*) under registration number B 225723. At the time of the publication of the Offer Document, the share capital of the Bidder amounts to USD 18,441,474, which is divided into 1,844,147,400 shares with a nominal amount of USD 0.01 each. The Bidder was incorporated on 20 June 2018 and registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés, Luxembourg*) on 5 July 2018.

The corporate purpose of the Bidder pursuant to its articles of association is (i) the direct or indirect acquisition and holding of interests in any other Luxembourg or foreign entities by way of, among others, the subscription or the acquisition (x) of any securities and rights through participation, contribution, underwriting, firm purchase or option, negotiation or in any other way, or (y) of financial debt instruments in any form, and (ii) the administration, development and management of such holding of interests.

The managers (*gérants*) of the Bidder are Ms. Aiste Ramanauskaite, Mr. Christiaan De Wet Snyders and EQT Luxembourg Management S.à r.l., a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg with registered office at 51A, Boulevard Royal, L-2449 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés, Luxembourg*) under number B 217192. Each manager has the power to represent the Bidder together with another manager.

The financial year of the Bidder starts on 1 November of each calendar year and ends on 31 October of the following year.

### **7.2 Shareholder structure of the Bidder**

The Bidder is legally controlled by fund entities of the EQT VIII fund, which are in turn managed and legally controlled by affiliates of EQT AB, a public limited liability company (*Aktiebolag*) under the laws of Sweden with registered office in 103 27 Stockholm, Sweden, and registered with the Swedish Companies Register

(*Bolagsverket*) under number 556849-4180 ("**EQT AB**", and together with its affiliates, "**EQT**").

EQT AB is publicly listed and does not have a controlling shareholder.

### **7.3 Information about EQT**

EQT is a purpose-driven global investment organization. With a Nordic heritage and a global mindset, EQT has a track record of almost three decades of delivering consistent and attractive returns across multiple geographies, sectors and strategies. EQT has investment strategies covering all phases of a business' development, from start-up to maturity. At the time of the publication of the Offer Document, the investment funds belonging to EQT had approximately EUR 126 billion in fee-generating assets under management within the two business segments Private Capital and Real Assets.

### **7.4 SUSE Shares and instruments currently held by the Bidder**

#### **7.4.1 Currently held SUSE Shares**

At the time of publication of the Offer Document, the Bidder directly holds 135,060,220 SUSE Shares (the "**Bidder SUSE Shares**"), corresponding to approximately 79.1% of the current share capital and voting rights in SUSE.

#### **7.4.2 Currently held financial instruments**

At the time of publication of the Offer Document, the Bidder does not directly or indirectly hold financial instruments in relation to SUSE that have to be notified pursuant to Article 12 of the Luxembourg law on transparency requirements for issuers dated 11 January 2008, as amended (*Loi du 11 janvier 2008 relative aux obligations de transparence des émetteurs* – "**Lux Transparency Law**").

### **7.5 Possible future acquisitions of SUSE Shares**

The Bidder reserves the right, within the limits of applicable law, to directly or indirectly acquire SUSE Shares outside the Purchase Offer, whether on or off the stock exchange. Any such purchases or arrangements will be made outside the United States and in compliance with applicable law.

## 8 DESCRIPTION OF SUSE

### 8.1 Legal basis

SUSE is a public limited liability company (*société anonyme*) incorporated under the laws of the Grand Duchy of Luxembourg with registered office at 11-13, Boulevard de la Foire, L-1528 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés, Luxembourg*) under number B 225816. The headquarters of SUSE Group are in Luxembourg, Grand Duchy of Luxembourg. The financial year of SUSE starts on 1 November of each calendar year and ends on 31 October of the following year.

Pursuant to article 4 of SUSE's articles of association, the corporate purpose of SUSE is (i) the direct or indirect acquisition and holding of interests in any other Luxembourg or foreign entities by way of, among others, the subscription or the acquisition (x) of any securities and rights through participation, contribution, underwriting, firm purchase or option, negotiation or in any other way, or (y) of financial debt instruments in any form, and (ii) the administration, development and management of such holding of interests.

The SUSE Shares are admitted to trading on the regulated market of the FSE with additional post-admission obligations (*Prime Standard*) under ISIN LU2333210958 and are tradable via XETRA.

### 8.2 Capital structure

#### 8.2.1 Share capital

At the time of publication of the Offer Document, the share capital of SUSE amounts to USD 17,079,469.30 and is divided into 170,794,693 ordinary shares in dematerialized form (*titres dématérialisés*) without any nominal value and an accounting par value of USD 0.10 each (ISIN LU2333210958). There are no different classes of shares. Each SUSE Share entitles its holder to one vote.

#### 8.2.2 Authorized capital

The management board of SUSE ("**Management Board**") is authorized, in the period up to 3 May 2026, to increase the issued share capital of SUSE with the approval of the supervisory board of SUSE ("**Supervisory Board**"), on one or more occasions up to an amount of USD 26,000,000.00 (including the currently issued share capital) represented by up to 260,000,000 shares without any nominal value against contribution in cash or in kind, by the incorporation of reserves, issue premiums or retained earnings, with or without the issue of new shares, or following

the issue and the exercise of subordinated or non-subordinated bonds, convertible into or repayable by or exchangeable for shares (whether provided in the terms at issue or subsequently provided), or following the issue of bonds with warrants or other rights to subscribe for shares attached, or through the issue of standalone warrants or any other instrument carrying an entitlement to, or the right to subscribe for, shares. Shareholders generally have a statutory preferential subscription right for any new shares to be subscribed for by a contribution in cash. However, the Management Board is authorized to limit or cancel such preferential subscription rights.

### 8.2.3 Treasury shares

At the time of publication of the Offer Document, SUSE does not hold any SUSE Shares as treasury shares (*actions propres*). Pursuant to the resolution of the general meeting (*assemblée générale*) of SUSE dated 23 March 2023, the Management Board is authorized, subject to the approval of the Supervisory Board, in the period up to 23 March 2028, to repurchase SUSE Shares, on one or several occasions up to 10% of the total number of shares of SUSE at such time. As a result of such acquisitions, SUSE's holding of its own shares may not at any time exceed ten percent (10%) of the total number of shares comprising the share capital of SUSE.

## 8.3 **Business activities of the SUSE Group**

SUSE Group is one of the world's leading enterprise-grade open-source infrastructure software companies.

In the financial year 2022, SUSE Group generated consolidated (IFRS reported) revenues of USD 653 million (2021: USD 559 million) and reported an adjusted EBITDA of USD 241 million (2021: USD 212 million). Pursuant to SUSE, adjusted EBITDA represents earnings before net finance costs, loss on associate, tax, depreciation and amortization of intangible assets and is adjusted for share-based payments, contract liabilities haircut, separately reported items, specific non-recurring items and net unrealized foreign exchange movements.

In the annual average, SUSE Group employed 2,316 employees in the financial year 2022 (2021: 1,914).

## 8.4 **Boards**

The Management Board consists of the following members:

- Dirk-Peter van Leeuwen (Chief Executive Officer)
- Jonathan Attack (Interim Chief Financial Officer)

- Andrew McDonald (Chief Legal Officer and Company Secretary)

The Supervisory Board consists of eight members, all of which are to be elected by the general meeting (*assemblée générale*) of SUSE. At the time of publication of the Offer Document, the following persons are members of the Supervisory Board:

- Jonas Persson (Chair of the Supervisory Board)
- Adrian T. Dillon
- Elke Reichart
- Henning Kagermann
- Johannes Reichel
- Nora M. Denzel
- Philipp Woerner
- Sheng Liang

## **8.5 Potential conflicts of interest**

The Bidder was informed by SUSE that all current members of the Management Board hold SUSE Shares and/or RSUs (as defined in Section 9.2.6 of the Offer Document) in relation to SUSE Shares. In addition, Dirk-Peter van Leeuwen and Andrew McDonald participate in a management participation program of EQT in relation to SUSE. The Bidder was further informed by SUSE that all current members of the Supervisory Board hold SUSE Shares and/or other indirect economic interests in SUSE. Johannes Reichel and Philipp Woerner also have parallel roles at EQT Partners GmbH advising EQT with respect to its investment in SUSE.

All members of the Management Board and the Supervisory Board of SUSE carefully considered, and took appropriate measures to avoid, any potential conflicts of interest in making decisions on the Transaction Framework Agreement, the contemplated Transaction and the External SUSE Group Financing. Neither Johannes Reichel or Philipp Wörner, nor EQT related observers on the Supervisory Board, participated in the Supervisory Board's resolution on the Transaction and on entering into the Transaction Framework Agreement (as defined in Section 9.1 of the Offer Document) and the agreements with respect to the External SUSE Group Financing (as defined in Section 9.2.3 of the Offer Document).

## 9 BACKGROUND OF THE PURCHASE OFFER

### 9.1 Economic and strategic background of the Purchase Offer

The Purchase Offer is based on a transaction framework agreement (the "**Transaction Framework Agreement**") entered into between the Bidder and SUSE on 17 August 2023, which sets forth the mutual understanding and intentions of the parties thereto with respect to an intended termination of trading of the SUSE Shares on the regulated market (*Regulierter Markt*) of the FSE (the "**Delisting**") which is supported by the Management Board and the Supervisory Board.

The decision of the Bidder to pursue the Delisting has been taken following a period of change within SUSE. Execution challenges and several changes during the past twelve months have impacted SUSE's operating performance and market valuation, which has been compounded by the low liquidity of the SUSE Shares. With the recently announced appointment of the new Chief Executive Officer, enterprise software industry veteran Dirk-Peter van Leeuwen, as well as new Chief Financial Officer, Chief Revenue Officer and Chief Strategy Officer, SUSE has now completed its management revamp. The Bidder believes that a strengthened partnership with SUSE and this new management team in a private setting is the best way forward for SUSE. The Delisting will also allow for long-term investments to reaccelerate growth.

Pursuant to the Transaction Framework Agreement, the Delisting shall be effected by a contemplated merger of SUSE in accordance with the provisions of article 1021-1 and following of the Luxembourg Company Law as transferring company into a wholly-owned subsidiary of the Bidder in the legal form of an unlisted public limited liability company (*société anonyme*), incorporated under the laws of the Grand Duchy of Luxembourg ("**New SUSE**"), as absorbing company (the "**Merger**"). The Merger is intended to be resolved in an extraordinary general meeting (*assemblée générale*) of SUSE expected to be held in the fourth calendar quarter of 2023 following the consummation of the Purchase Offer.

The Purchase Offer is made in view of the contemplated Delisting, which is intended to be effected via the contemplated Merger. The Purchase Offer gives all SUSE Shareholders who do not wish to remain invested in SUSE following the proposed Delisting the option to sell their SUSE Shares to the Bidder at the Offer Price. The Bidder does not intend to pursue a squeeze-out. Thus, SUSE Shareholders who wish to stay invested not only benefit from the Interim Dividend but are also provided with the opportunity to participate in any future value-creation in a private setting alongside the Bidder. Key current institutional SUSE Shareholders support the initiative of the Bidder.

The Purchase Offer is intended to be financed by the amount of the Interim Dividend received by the Bidder with respect to the Bidder SUSE Shares.

## **9.2 Material terms of the Transaction Framework Agreement**

The material terms of the Transaction Framework Agreement in relation to the Purchase Offer, the Interim Dividend, the Merger and the Delisting (together the "**Transaction**") can be summarized as set forth in the following subsections.

The intentions of the Bidder described below are the intentions of the Bidder as set forth in the Transaction Framework Agreement which have not changed to the date of the publication of the Offer Document and the Bidder has no intention to deviate from these intentions.

### **9.2.1 Purchase Offer**

The Bidder agreed to submit this Purchase Offer with a consideration in cash as set forth in Section 4.1 of the Offer Document and the offer condition as set forth in Section 11.1 of the Offer Document.

### **9.2.2 Interim Dividend**

SUSE agreed to use reasonable best efforts, subject to the requirements of applicable law, to declare the Interim Dividend without undue delay after the Results Publication and pay the Interim Dividend (net of applicable withholding taxes, if any) to the SUSE Shareholders without undue delay following declaration of the Interim Dividend.

The Aggregate Interim Dividend Amount shall be determined such that the gross amount of the Interim Dividend paid to the Bidder with respect to the Bidder SUSE Shares shall equal the Actually Required Financing Amount (as defined in Section 11.1 of the Offer Document); provided that the gross amount of the Interim Dividend per SUSE Share resulting from the Actually Required Financing Amount shall be determined in, and rounded up to, whole Euro cents (*i.e.*, no fractions of Euro cents).

### **9.2.3 Funding of the Interim Dividend**

SUSE will fund the Interim Dividend from cash at hand within the SUSE Group and new loans for which certain members of the SUSE Group have obtained binding external debt financing commitments (together with the final and binding documentation replacing the obtained debt financing commitments, the "**External SUSE Group Financing**") in an amount of up to EUR 500,000,000.00 (or its USD equivalent).

SUSE agreed *vis-à-vis* the Bidder, to the extent legally permissible, that it will use reasonable best efforts (and that it shall procure that the relevant members of the SUSE Group will use reasonable best efforts) to procure that the net cash proceeds received by members of the SUSE Group from the External SUSE Group Financing are, in compliance with applicable laws and regulations, up-streamed to SUSE without undue delay to facilitate the payment of the Interim Dividend in the Aggregate Interim Dividend Amount determined in accordance with the Transaction Framework Agreement (see Section 9.2.2 of the Offer Document) so that the amount of the Interim Dividend paid to the Bidder with respect to the Bidder SUSE Shares equals at least the Actually Required Financing Amount.

#### 9.2.4 Merger and Delisting

Both parties agreed to use their reasonable best efforts to perform and give effect to the Merger effecting the Delisting as soon as possible following payment of the Interim Dividend. They also agreed on the key elements of the Merger, including that SUSE Shareholder shall receive one ordinary share in New SUSE in dematerialized form (*titres dématérialisés*) without any nominal value (the "**New SUSE Shares**") per SUSE Share held by the relevant SUSE Shareholder at the time of the Merger and that New SUSE shall have a two-tier board structure with a management board and a supervisory board.

In the Transaction Framework Agreement, the Bidder affirmed its full trust and confidence in the current and (with a view to the announcement of the appointment of the new Chief Financial Officer and member of the Management Board) future members of the Management Board and its intention to use best efforts to cause that in connection with the Merger, the members of the Management Board appointed at the relevant time, are appointed as members of the management board of New SUSE. Moreover, the Bidder intends to be represented in the future supervisory board of New SUSE in a manner which appropriately reflects its shareholding in New SUSE and reserved the right to revisit the current size and composition of the Supervisory Board and of the future supervisory board of New SUSE, respectively. It may decide to cause, by exercising its voting and/or other shareholder rights in SUSE and New SUSE, respectively, changes in this regard in connection with the implementation of the Merger or following the effectiveness of the Merger.

The parties otherwise agreed that the governance and the articles of association of New SUSE shall correspond in all material respects to the governance and articles of association of SUSE at the time of the Merger. However, in respect of the articles of association certain adjustments can be made in the context of the Merger as are



permissible under applicable law as a result of the Delisting (see Section 14.2.3 of the Offer Document).

#### 9.2.5 SUSE's Support of the Delisting

To the extent legally and practically possible, especially with regard to the fiduciary duties of the members of the Management Board and the Supervisory Board, SUSE undertook to take all steps and measures which are reasonably necessary and appropriate to support the implementation of the Delisting and to refrain, and to use reasonable best efforts to procure that any other member of the SUSE Group will refrain, from conducting any measures or steps which may adversely affect the success of the Delisting.

#### 9.2.6 Long term incentive plans

Under SUSE's current long term incentive plans (the "**LTIPs**"), participants in the LTIPs (the "**LTIP Participants**") receive stock options ("**Options**") and/or restricted stock units ("**RSUs**") relating to SUSE Shares. Upon the exercise of Options or (partial) vesting of RSUs, LTIP Participants receive newly issued SUSE Shares. With regard to the vesting of a tranche of RSUs otherwise vesting in October 2023, the Bidder agreed that SUSE may provide, subject to certain exceptions, for an accelerated vesting, resulting in up to 231,000 additional SUSE Shares (the "**Maximum LTIP SUSE Shares**") being issued prior to the end of the Acceptance Period.

To the extent LTIP Participants have been issued, or, in case of the Maximum LTIP SUSE Shares, will be issued, SUSE Shares prior to the end of the Acceptance Period, they will be paid the Interim Dividend per SUSE Share, and will have the right to accept the Purchase Offer within the Acceptance Period, with regard to any SUSE Shares they hold at the relevant time.

Other than for the acceleration of the tranche of RSUs otherwise vesting in October 2023, vesting and, potentially, settlement provisions and the vesting schedule in relation to RSUs and Options which have already been awarded but have not vested yet, will, in general, remain unaffected by the Transaction, except that, following the Delisting, SUSE intends to make adjustments to the LTIPs to address the lower fungibility of the New SUSE Shares, including a potential opportunity that New SUSE Shares issued to LTIP Participants are being sold to New SUSE subject to certain limitations.

SUSE agreed not to grant any further Options or RSUs under the LTIPs. Instead, SUSE and the Bidder agreed that SUSE shall implement new long term incentive

plans for the granting of awards following the date of the Transaction Framework Agreement, with liquidity for recipients being connected to an exit by EQT from its investment in SUSE.

#### 9.2.7 Term

The Transaction Framework Agreement terminates at the earlier of (i) 31 March 2024 and (ii) one (1) month after the Merger becomes effective. In addition, the Transaction Framework Agreement provides each party with termination rights in certain defined circumstances (*e.g.*, breach of contract, non-satisfaction of the Offer Condition, failure to pay the Interim Dividend).

### 10 **PREMIUM OF COMBINED OFFER AND INTERIM DIVIDEND AMOUNT PER SUSE SHARE ON THE MARKET PRICE**

The Bidder has, in particular, considered the following aspects for the determination of the Combined Offer and Interim Dividend Amount.

#### 10.1.1 Historical stock exchange prices

The SUSE Shares are admitted to trading on the regulated market (*Regulierter Markt*) of FSE in its subsegment with additional post-admission obligations (*Prime Standard*) under ISIN LU2333210958 and are tradable on XETRA.

Unless expressly indicated otherwise, references in this Section 10 of the Offer Document to stock exchange prices refer to prices in XETRA trading and have been taken from Bloomberg.

On 17 August 2023, after close of trading and prior to the publication by the Bidder of its decision to launch the Purchase Offer, SUSE published a notification pursuant to Article 17 of the Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ("**Adhoc Notification**") announcing the signing of the Transaction Framework Agreement and the contemplated Transaction.

Based on the stock exchange prices of the SUSE Shares prior to the Adhoc Notification by SUSE, the Combined Offer and Interim Dividend Amount per SUSE Share includes the following premiums:

- (a) On 17 August 2023, the last unaffected trading day before the announcement of the decision of the Bidder to launch the Purchase Offer on 17 August 2023, the closing stock exchange price of the SUSE Shares amounted to EUR 9.605. Based on such closing stock exchange price, the Combined Offer and Interim

Dividend Amount per SUSE Share includes a premium of EUR 6.395 per SUSE Share or approximately 67%.

- (b) The volume-weighted average stock price ("VWAP") for the last three months prior to and including 17 August 2023, amounted to EUR 12.16 per SUSE Share. Based on this average price, the Combined Offer and Interim Dividend Amount per SUSE Share includes a premium of EUR 3.84 per SUSE Share or approximately 32%.
- (c) The VWAP for the last six months prior to and including 17 August 2023, amounted to EUR 13.76 per SUSE Share. Based on this average price, the Combined Offer and Interim Dividend Amount per SUSE Share includes a premium of EUR 2.24 per SUSE Share or approximately 16%.

#### 10.1.2 Research analysts

The following table gives an overview of recent recommendations of research analysts (based on information collected and provided by Bloomberg) published before 17 August 2023, the day of the Adhoc Notification.

<b>Recent recommendations of research analysts before <u>17 August 2023</u></b>			
<b>Bank</b>	<b>Date of analysis</b>	<b>Target price (EUR)</b>	<b>Recommendation</b>
Goldman Sachs	19 July 2023	13.00	Buy
Jefferies	6 July 2023	17.00	Buy
JP Morgan	6 July 2023	14.00	Neutral
Morgan Stanley	6 July 2023	13.00	Equal weight
Numis	11 August 2023	12.00	Hold
<b>Median</b>		<b>13.00</b>	

The Combined Offer and Interim Dividend Amount per SUSE Share exceeds the median of the target price for SUSE Shares of EUR 13.00 per SUSE Share as set forth above by EUR 3.00 or approximately 23%.

## 11 **OFFER CONDITION**

### 11.1 **Offer Condition**

The Purchase Offer and the agreements between the Bidder and the SUSE Shareholders that have been entered into as a result of the acceptance by the SUSE

Shareholders of the Purchase Offer are subject to the following condition (the "**Offer Condition**"):

No later than on the sixth (6<sup>th</sup>) Banking Day following the Results Publication, the Bidder receives an aggregate amount of the Interim Dividend with respect to the Bidder SUSE Shares which is at least equal to the Actually Required Financing Amount.

**"Actually Required Financing Amount"** means an amount in Euro equal to the sum of (i) the total number of Tendered SUSE Shares multiplied by the Offer Price and (ii) EUR 11,000,000.00 (in words: eleven million Euro).

## **11.2 Non-fulfillment of the Offer Condition; waiver of the Offer Condition**

The Bidder may waive the Offer Condition at any time if the Offer Condition has not finally lapsed beforehand.

If the Offer Condition set forth in Section 11.1 of the Offer Document has either not been fulfilled until the applicable date or has definitively failed before such date and the Bidder has not effectively waived it beforehand, the Purchase Offer shall lapse. In this case, the agreements which have been entered into as a result of the acceptance of the Purchase Offer will cease to exist and will not be consummated (condition subsequent; (*auflösende Bedingung*)); Tendered SUSE Shares will be unblocked. The Central Settlement Agent (as defined in Section 12.1 of the Offer Document) will promptly, but at the latest within four Banking Days after announcement that the Purchase Offer has lapsed (see Section 11.3 of the Offer Document), order the unblocking of the Tendered SUSE Shares at LuxCSD. Such unblocking will not be subject to any charges by the Central Settlement Agent. Any costs and expenses charged by the Custodian Banks or investment service providers, and any expenses incurred by SUSE Shareholders, must be borne by the respective SUSE Shareholder.

## **11.3 Publications concerning the Offer Condition**

The Bidder will promptly announce in accordance with Section 4.3 of the Offer Document if (i) the Offer Condition has been effectively waived by the Bidder, (ii) the Offer Condition has been fulfilled, or (iii) the Purchase Offer has lapsed because the Offer Condition has either not been fulfilled until the applicable date or has definitively failed before such date and the Bidder has not effectively waived it beforehand.

## 12 ACCEPTANCE AND SETTLEMENT OF THE PURCHASE OFFER

### 12.1 Central Settlement Agent

The Bidder has appointed Banque Internationale à Luxembourg, *société anonyme*, 69, route d'Esch, L-2953 Luxembourg, Grand Duchy of Luxembourg (the "**Central Settlement Agent**") to act as central settlement agent for the Purchase Offer.

### 12.2 Declaration of Acceptance and Blocking of SUSE Shares

***Note:** SUSE Shareholders who wish to accept the Purchase Offer should contact their Custodian Bank (as defined below) or other custodian investment service provider with registered office or a branch in the Grand Duchy of Luxembourg or the Federal Republic of Germany with any questions they may have about acceptance of the Purchase Offer and the technical aspects of settlement. They have been separately informed about the modalities for acceptance and settlement of the Purchase Offer and are required to inform customers who hold SUSE Shares in their securities deposit accounts about the Purchase Offer and the steps necessary to accept it.*

During the Acceptance Period, SUSE Shareholders can accept the Purchase Offer only by:

- (a) submitting a declaration of acceptance for the Purchase Offer in text form or electronically (the "**Declaration of Acceptance**") *vis-à-vis* their own custodian investment service provider (the "**Custodian Bank**"), and
- (b) instructing their Custodian Bank to effect the blocking of the SUSE Shares for which they are submitting the Declaration of Acceptance for further transfer by their Custodian Bank and by LuxCSD.

The Declaration of Acceptance will only become effective if the Tendered SUSE Shares have been blocked at LuxCSD for further transfer by 18:00 hrs (Frankfurt am Main local time) / 12:00 hrs (New York local time) by the second Banking Day after expiration of the Acceptance Period.

Tendered SUSE Shares that are blocked at LuxCSD by 18:00 hrs (Frankfurt am Main local time) / 12:00 hrs (New York local time) by the second Banking Day after expiration of the Acceptance Period, and for which no withdrawal has been declared by the end of the Acceptance Period, cannot be unblocked unless the Purchase Offer lapsed (see Section 11.2 of the Offer Document).

Tendered SUSE Shares cannot be traded. Title to the Tendered SUSE Shares may not be transferred other than to the Bidder in accordance with the Purchase Offer.

Declarations of Acceptance not received by the respective Custodian Bank within the Acceptance Period, or incorrectly or incompletely filled out, do not count as acceptance of the Purchase Offer and do not entitle the respective SUSE Shareholder to receive the Offer Price. Neither the Bidder nor persons acting on its behalf are obliged to notify the respective SUSE Shareholder of any deficiencies or errors in the Declaration of Acceptance and bear no liability if such notification is not made.

### **12.3 Further declarations of the SUSE Shareholders upon acceptance of the Purchase Offer**

By accepting the Purchase Offer pursuant to Section 12.2 of the Offer Document,

- (a) the accepting SUSE Shareholders instruct and authorize their respective Custodian Banks and any intermediate custodians of the relevant Tendered SUSE Shares
  - (i) to leave the Tendered SUSE Shares in the securities deposit accounts of the accepting SUSE Shareholders for the time being;
  - (ii) to themselves instruct and authorize LuxCSD to transfer title to the Tendered SUSE Shares, in each case including any ancillary rights, in particular the right to dividends, existing at the time of the settlement of the Purchase Offer, to the Bidder concurrently and contemporaneously (but not before the publication that the Offer Condition has been fulfilled or effectively waived by the Bidder as set forth in Section 11.3 of the Offer Document) against payment of the Offer Price for the relevant Tendered SUSE Shares to LuxCSD (for onward payment by LuxCSD on the account of the relevant Custodian Bank at LuxCSD, or to the account of such intermediate custodians through which their relevant Custodian Bank is connected to LuxCSD), in accordance with the provisions of the Purchase Offer;
  - (iii) to themselves instruct and authorize any intermediate custodians of the relevant Tendered SUSE Shares and LuxCSD to make available to the Bidder or the Central Settlement Agent all information necessary for declarations, publications or notifications required in accordance with the Purchase Offer; and

- (iv) to forward the Declarations of Acceptance and, as the case may be, declarations of withdrawal (see Section 15.2 of the Offer Document) to the Central Settlement Agent upon request;
- (b) the accepting SUSE Shareholders instruct and authorize their respective Custodian Banks and the Central Settlement Agent, in each case under exemption from the legal prohibitions of self-contracting pursuant to Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*), to take all steps and to make and to receive all necessary or expedient declarations for the settlement of the Purchase Offer in accordance with the Offer Document and, in particular, to effect the transfer of title to the Tendered SUSE Shares to the Bidder in accordance with para. (a) above;
- (c) the accepting SUSE Shareholders declare that
  - (i) unless otherwise expressly stated in the Declaration of Acceptance, they accept the Purchase Offer for all SUSE Shares which are held in their securities deposit accounts with their Custodian Bank at the time they declare their acceptance of the Purchase Offer;
  - (ii) at the time of transfer of title to the Bidder, they are the sole holders of title to their Tendered SUSE Shares and such shares are free from rights and claims of third parties; and
  - (iii) they are transferring title to their Tendered SUSE Shares, in each case including any ancillary rights, in particular the right to dividends, existing at the time of the settlement of the Purchase Offer, to the Bidder concurrently and contemporaneously against payment by the Bidder of the Offer Price to LuxCSD (for onward payment by LuxCSD to the account of their relevant Custodian Bank with LuxCSD, or to the account of such intermediate custodians through which their relevant Custodian Bank is connected to LuxCSD), subject to the Results Announcement and the publication that the Offer Condition has been fulfilled or effectively waived by the Bidder as set forth in Section 11.3 of the Offer Document.

In the interest of a smooth and prompt settlement of the Purchase Offer, the instructions, declarations, mandates, powers and authorizations set forth in Sections 12.3(a) to (c) of the Offer Document are irrevocably issued by the accepting SUSE Shareholders. They shall lapse only in the event of a valid withdrawal from the agreements which have been entered into as a result of the acceptance of the Purchase Offer in accordance with Section 15 of the Offer

Document or in case of final non-fulfillment of the Offer Condition set forth in Section 11.1 of the Offer Document.

#### **12.4 Legal consequences of acceptance**

Upon acceptance of the Purchase Offer, an agreement for the sale and transfer of the Tendered SUSE Shares to the Bidder will come into existence between the accepting SUSE Shareholder and the Bidder, in each case subject to the terms and conditions of the Purchase Offer. This agreement will be subject to German law. Furthermore, by accepting the Purchase Offer, the accepting SUSE Shareholders issue and grant the instructions, authorizations, mandates and powers referred to in Sections 12.3(a) and (b) of the Offer Document and make the declarations set forth in Section 12.3(c) of the Offer Document.

The settlement of the Purchase Offer will take place only after the Offer Condition has been fulfilled or effectively waived by the Bidder.

All ancillary rights of the Tendered SUSE Shares existing at the time of settlement (including all dividend rights) will be transferred to the Bidder upon transfer of title of the Tendered SUSE Shares. As the Interim Dividend per SUSE Share will be paid to all SUSE Shareholders before the settlement of the Purchase Offer, such Interim Dividend per SUSE Share will be paid to SUSE Shareholders also with respect to Tendered SUSE Shares, it being noted that the right to the Interim Dividend per SUSE Share will not be transferred to the Bidder.

#### **12.5 Settlement of the Purchase Offer and payment of the Offer Price**

Payment of the Offer Price will be effected through LuxCSD to the relevant Custodian Bank, where applicable through the account of such intermediate custodian through which their Custodian Bank is connected to LuxCSD, with such payment by LuxCSD being made concurrently and contemporaneously with the transfer of the Tendered SUSE Shares to the Custodian Bank of the Bidder.

If the Offer Condition has been fulfilled (not by way of a waiver), the Central Settlement Agent will cause the Offer Price for the Tendered SUSE Shares to be paid to LuxCSD for onward transfer through LuxCSD to the relevant Custodian Banks via such intermediate custodians through which the relevant Custodian Banks are connected to LuxCSD, no later than on the third Banking Day following the publication that the Offer Condition has been fulfilled (as set forth in Section 11.3 of the Offer Document). If the Offer Condition has been effectively waived by the Bidder, the Central Settlement Agent will cause the Offer Price for the Tendered SUSE Shares to be paid to LuxCSD for onward transfer through LuxCSD to the



relevant Custodian Banks via such intermediate custodians through which the relevant Custodian Bank are connected to LuxCSD, no later than on the eighth Banking Day following the Results Publication.

Upon transfer of the Offer Price for each Tendered SUSE Share to LuxCSD, the Bidder has fulfilled its obligation to pay the Offer Price for such Tendered SUSE Share. Transfer of title to the Tendered SUSE Shares to the Bidder is not dependent on the receipt of the Offer Price paid for such Tendered SUSE Share by the relevant accepting SUSE Shareholder's Custodian Bank. It will be the responsibility of LuxCSD to transfer the Offer Price without undue delay to the relevant Custodian Bank, or to such intermediate custodian through which the relevant Custodian Bank is connected to LuxCSD, and it is the relevant Custodian Banks responsibility to credit the Offer Price without undue delay to the relevant accepting SUSE Shareholder.

## **12.6 Costs and expenses**

The acceptance of the Purchase Offer will not be subject to any charges by the Central Settlement Agent. Any costs and expenses charged by the Custodian Banks or investment service providers, and any expenses incurred by SUSE Shareholders, must be borne by the respective SUSE Shareholder. Any exchange, sales tax or stamp duty arising from the acceptance of the Purchase Offer shall also be borne by the respective SUSE Shareholder.

## **13 FINANCING OF THE OFFER**

At the time of publication of the Offer Document, the total number of SUSE Shares issued by SUSE amounts to 170,794,693. Together with the Maximum LTIP SUSE Shares, the total number of SUSE Shares would amount to 171,025,693 SUSE Shares.

If the Purchase Offer was accepted for all SUSE Shares plus the Maximum LTIP SUSE Shares but except for the Bidder SUSE Shares, *i.e.*, for 35,965,473 SUSE Shares, the payment obligation of the Bidder to the accepting SUSE Shareholders would amount to EUR 452,085,995.61 in the aggregate (*i.e.*, the Offer Price of EUR 12.57 per SUSE Share multiplied by 35,965,473 Tendered SUSE Shares).

Moreover, it is estimated that the Bidder will incur costs in an amount of EUR 11,000,000.00 (in words: eleven million Euro) in respect of the Transaction. Based on the foregoing, the total maximum amount that the Bidder would need for the acquisition of all Tendered SUSE Shares as well as to cover such transaction costs would thus equal EUR 463,085,995.61. This amount will equal the Actually

Required Financing Amount, timely receipt of which by the Bidder is secured by the Offer Condition for the settlement of the Purchase Offer.

## **14 POTENTIAL EFFECTS FOR SUSE SHAREHOLDERS WHO DO NOT ACCEPT THE PURCHASE OFFER**

SUSE Shareholders who do not intend to accept the Purchase Offer should take the following into account:

### **14.1 Effects of the Purchase Offer**

- 14.1.1 The present stock market price of the SUSE Shares reflects the fact that the Bidder published its decision to launch this Offer on 17 August 2023. It is uncertain whether the stock market price of the SUSE Shares after settlement of the Purchase Offer will continue to stay at the current level or will be higher or lower.
- 14.1.2 Depending on the acceptance quota of the Purchase Offer, the settlement of the Purchase Offer will result in a respective reduction of the free float of the issued SUSE Shares. This may also result in a respective reduction of the supply and the demand for SUSE Shares and, therefore, the liquidity of the SUSE Shares. It is possible that, following the settlement of the Purchase Offer, buy and sell orders with respect to SUSE Shares cannot be executed or cannot be executed in a timely fashion. Moreover, a potential reduction of the liquidity of the SUSE Shares could result in substantially heavier price fluctuations of the SUSE Shares in the future.
- 14.1.3 The Bidder SUSE Shares already provide the Bidder with a qualified voting majority at the general meeting (*assemblée générale*) of SUSE. The general meeting (*assemblée générale*) of SUSE could resolve on almost all important structural and other measures under Luxembourg law solely based on affirmative votes cast by the Bidder in such general meeting. Such measures allow, for example, the election and the dismissal of shareholder representatives of the Supervisory Board, approving or rejecting dividend distributions, amendments to the articles of association, capital increases, exclusion of subscription rights for shareholders in capital measures, reorganizations, mergers (including the Merger) as well as a dissolution of SUSE. Only in specific circumstances (not including the Merger) would there be an obligation on the part of the Bidder under the laws of the Grand Duchy of Luxembourg to submit to the minority shareholders, based on a company valuation of SUSE, an offer to acquire their SUSE Shares in exchange for reasonable compensation. Such company valuation could be

equivalent in value to the Offer Price but it could also be lower or higher. The implementation of some of these measures (including the Merger) would also result in the delisting of the SUSE Shares.

## **14.2 Effects of the Merger and the Delisting**

- 14.2.1 As set out in Section 9.1 of the Offer Document, the Bidder intends to consummate the Merger following the settlement of the Purchase Offer. Under the Merger, all remaining SUSE Shareholders will receive one New SUSE Share for each SUSE Share. Upon effectiveness of the Merger, SUSE as transferring company will cease to exist as a legal entity. The New SUSE Shares will not be admitted to trading on the regulated market of any stock exchange in Germany or the European Union or the European Economic Area. Therefore, the SUSE Shareholders that become shareholders of New SUSE as a consequence of the Merger will not have access to an organized or regulated market for the New SUSE Shares. Further, there is no intention by SUSE to apply for, or approve of, an inclusion of the New SUSE Shares to any multilateral trading facilities such as the open market (*Freiverkehr*) of the FSE and, consequently, there may be no access to such trading facilities or stock exchanges.
- 14.2.2 Since the New SUSE Shares are not listed on a regulated market and there is no intention by SUSE to apply for, or support, a listing on any multilateral trading facilities such as the open market (*Freiverkehr*) of the FSE, several transparency and trading provisions that apply to SUSE will no longer apply: In particular, Article 3 (*annual financial reports*), Article 4 (*half-yearly financial reports*), Articles 8 *et seqq.* (*notification of the acquisition or disposal of major holdings*) of the Lux Transparency Law, Art. 17 (*publication of insider information*), Article 18 (*insider lists*) and Article 19 (*director's dealings notifications*) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, the provisions of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) and certain other provisions of Luxembourg law (such as the Luxembourg law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies), the German Securities Trading Act (*Wertpapierhandelsgesetz*) and the listing rules of the FSE (*Börsenordnung der Frankfurter Wertpapierbörse*) will no longer apply with respect to New SUSE and the New SUSE Shares, respectively. This will result in a significant lower level of mandatory disclosure regarding New SUSE and

of protection for shareholders of New SUSE compared to the current situation.

14.2.3 Subject to the final documentation for the implementation of the Merger, it is intended that the governance and the articles of association of New SUSE shall correspond in all material respects to the governance and articles of association of SUSE at the time of the Merger, provided that in respect of the articles of association certain adjustments can be made in the context of the Merger as are permissible under applicable law as a result of the Delisting. In particular, and as further set out in Section 9.2.4 of the Offer Document regarding the commitments and statements made by the Bidder in the Transaction Framework Agreement, New SUSE shall also have a two-tier board structure with a management board and a supervisory board. However, there are certain differences between the governance of New SUSE and SUSE resulting from the changes in the legal framework of New SUSE under the laws of the Grand Duchy of Luxembourg as a consequence of the New SUSE Shares not being listed, which will also be reflected in the articles of association of New SUSE. In particular:

- (i) The threshold for the right to request amendments/additions to the agenda of the general meeting (*assemblée générale*) for shareholders of New SUSE increases to a holding of at least 10% of the share capital of New SUSE compared to only 5% of the share capital for SUSE.
- (ii) Unlike SUSE Shareholders, shareholders of New SUSE will not have the right to add draft resolutions for items included or to be included on the agenda of the general meeting (*assemblée générale*).
- (iii) While the revocation of SUSE's approved statutory auditor (*réviseur d'entreprises agréé*) by the general meeting (*assemblée générale*) may only be effected for cause, there are circumstances under which the general meeting (*assemblée générale*) of New SUSE may be authorized to revoke the appointment of its auditor without cause. In addition, shareholders of SUSE holding at least 5% of the share capital of SUSE may bring a claim before the Luxembourg District Court (*tribunal d'arrondissement*) sitting in commercial matters for the dismissal of SUSE's auditor where there are proper grounds for so doing. There will not be a corresponding right for shareholders of New SUSE.

## **15 RIGHT OF WITHDRAWAL**

### **15.1 Right of withdrawal**

SUSE Shareholders may, until expiration of the Acceptance Period, withdraw from the agreements which have been entered into as a result of the acceptance of the Purchase Offer.

### **15.2 Exercise of the right of withdrawal**

SUSE Shareholders may exercise a right of withdrawal pursuant to Section 15.1 of the Offer Document prior to expiration of the Acceptance Period only by:

- (a) declaring their withdrawal in text form or electronically to their Custodian Bank for a specified number of Tendered SUSE Shares, where in the event that no number is specified, the withdrawal shall be deemed to have been declared for all of the Tendered SUSE Shares of the SUSE Shareholder concerned; and
- (b) instructing their Custodian Bank to cause such number of Tendered SUSE Shares held in their securities deposit accounts as is equivalent to the number of Tendered SUSE Shares in respect of which they have declared their withdrawal to be unblocked by their Custodian Bank and at LuxCSD.

Withdrawal takes place when the withdrawing SUSE Shareholder sends a declaration in text form or electronically to the Custodian Bank during the Acceptance Period and the Custodian Bank causes the unblocking of the Tendered SUSE Shares for which the withdrawal is being declared. The Custodian Bank is required, without undue delay, after receiving the declaration of withdrawal, to cause the Tendered SUSE Shares for which withdrawal is being declared to be unblocked by them and at LuxCSD. For purposes of the Offer, the SUSE Shares are considered to be unblocked in a timely fashion if they have been unblocked at LuxCSD at the latest by 18:00 hrs (Frankfurt am Main local time) / 12:00 hrs (New York local time) on the second Banking Day after the end of the Acceptance Period.

The withdrawal of the acceptance of the Purchase Offer is irrevocable. Following such withdrawal, Tendered SUSE Shares for which the right of withdrawal was exercised are not considered to have been tendered under the Purchase Offer. In this case, SUSE Shareholders may again accept the Purchase Offer as described in this Offer Document, if the Acceptance Period has not yet expired on such date.

## **16 TAXES**

The Bidder recommends that, prior to accepting the Purchase Offer, SUSE Shareholders obtain tax advice on the tax consequences of the acceptance of the Purchase Offer, including with regard to the net amounts they will receive, taking into account their personal circumstances.

## **17 GOVERNING LAW AND JURISDICTION**

The Purchase Offer and the agreements which have been entered into as a result of the acceptance of the Purchase Offer shall be governed by German law. The exclusive place of jurisdiction for all legal disputes arising out of, or in connection with, the Purchase Offer (and any agreements which have been entered into as a result of the acceptance of the Purchase Offer) shall be, to the extent permitted by law, Frankfurt am Main, the Federal Republic of Germany.

However, any corporate-law-related issues affecting SUSE, in particular with regard to any information of SUSE's employees, shall be governed by the laws of the Grand Duchy of Luxembourg. The exclusive place of jurisdiction for all legal disputes arising out of, or in connection with, such issues could also be Luxembourg, Grand Duchy of Luxembourg, in most, if not all, cases.

**Marcel LUX III SARL**  
*The Management*